

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

Clayton E. Bunting, Esquire
Wilson, Halbrook & Bayard
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Georgetown, DE 19947

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Re: ***Hantman v. P/E, LTD. t/a Parker Enterprises, Ltd.***
C.A. No. S10C-08-008 RFS

Upon Plaintiff's Motion for Summary Judgment.
Granted in Part. Denied in Part.
Upon Plaintiff's Motion to Compel. Denied.

Submitted: August 17, 2011
Decided: October 20, 2011

Dear Counsel:

Following my Interim Order entering judgment in favor of Plaintiff for uncontested total disability payments from October 8, 2009 up to April 15, 2011, the parties have taken their positions on the remaining claims.

Defendant concedes that summary judgment is appropriate for liquidated damages for the period covered by the Interim Order; temporary total disability damages for the period July 27, 2011 and liquidated damages for that same period; attorney's fees

awarded to Plaintiff by the Industrial Accident Board; and future temporary total disability damages and liquidated damages going forward, as well as costs of this action, necessary costs of prosecution and reasonable attorney's fees. Defendant is liable for these amounts pursuant to 19 *Del. C.* § 1103 & § 1113, as well as *Huffman v. C.C. Oliphant & Sons, Inc.*, 432 A.2d 1207, 1210-1211 (Del. 1981).

Defendant asserts that the \$7000 medical expense claim has been paid. The parties shall resolve this matter based on the record. Whether or not this expense has been paid, Plaintiff is not entitled to liquidated damages, as explained below.

Defendant argues that under § 1103 liquidated damages are not available for anything other than wages. Thus, he objects to Plaintiff's claim for liquidated damages on the permanency award, the medical expert witness award and attorney's fees for the Board action.

Section 1113 states that a "civil action to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction." Liquidated damages are addressed in § 1103(b), which provides that such damages are available on unpaid wages.¹ There is no provision for liquidated damages for any other loss incurred by a plaintiff. Section 1113 provides that a plaintiff who prevails in a Wage Payment action is

¹Plaintiff states that "the amount equal to the unpaid wages to be added as liquidated damages will always be more than 100% of themselves in every case." This statement is not germane here, and furthermore is not correct. The option of paying 10 percent per day of unpaid wages is designed to motivate an employer to make the unpaid wage payment to the employee before the full amount equal to the unpaid wages is due. The phrase "whichever is smaller" makes this clear.

entitled to “costs of the action, the necessary costs of prosecution and reasonable attorney’s fees” to be paid by the defendant. There is no provision for any other award.

Thus, Plaintiff is not entitled to liquidated damages on the Board’s permanency award, the medical witness fee or attorney’s fees for the Board action.

With this guidance in mind, I expect the parties to stipulate to an amount to be entered on summary judgment.

Plaintiff’s motion for summary judgment **GRANTED** to the extent conceded by Defendant and explained *supra*. The motion is **DENIED** as to liquidated damages on Plaintiff’s permanency award, the medical witness fee and the Board’s award of attorney’s fees. Plaintiff’s motion to compel is **DENIED**.

As you both indicated a willingness to stipulate a sum certain, the time is now. You shall resolve the question of Plaintiff’s medical expenses and shall agree to a stipulation as to the amount to be entered on summary judgment based on the rulings contained herein.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary